

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JULIAN MIX-PEREZ,

Defendant.

8:16-CR-331

MEMORANDUM AND ORDER

This matter is before the Court upon initial review of the pro se motion to vacate under [28 U.S.C. § 2255](#) ([filing 220](#)) filed by the defendant, Julian Mix-Perez. The motion will be denied as premature.

The defendant was sentenced on July 20, 2017, and judgment was entered on July 24. [Filing 144](#). A notice of appeal was filed on August 1. [Filing 149](#). That appeal was docketed in the U.S. Court of Appeals for the Eighth Circuit as No. 17-2707, where it remains pending. And the defendant cannot pursue postconviction relief while his direct appeal is still pending. See [United States v. Jagim](#), 978 F.2d 1032, 1042 (8th Cir. 1992); [Masters v. Eide](#), 353 F.2d 517, 518 (8th Cir. 1965).

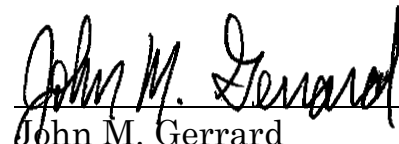
Accordingly, the defendant's motion to vacate will be denied without prejudice. And because that conclusion is not debatable, the Court will not issue a certificate of appealability. See [Tennard v. Dretke](#), 542 U.S. 274, 282 (2004); see also [Gonzalez v. Thaler](#), 132 S. Ct. 641, 648 (2012).

IT IS ORDERED:

1. The defendant's motion to vacate under [28 U.S.C. § 2255](#) ([filing 220](#)) is denied without prejudice.
2. A separate judgment will be entered.
3. The Court will not issue a certificate of appealability.
4. The Clerk is directed to mail a copy of this Memorandum and Order to the defendant at his last known address.

Dated this 11th day of April, 2018.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge